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4 WAYNE JOHNSON,  
5 Plaintiff,  
6 v.  
7 CONTRA COSTA COUNTY CLERK  
8 RECORDER, et al.,  
9 Defendants.

10 Case No. [21-cv-07579-JSC](#)

11 **SCREENING ORDER PURSUANT TO  
12 28 U.S.C. § 1915**

13 Re: Dkt. No. 1

14 Plaintiff Wayne Johnson, who is proceeding without an attorney, filed this civil rights  
15 action against the Contra Costa County Clerk-Recorder Deborah Cooper (“Court Clerk”), the  
16 Contra Costa County Court Reporter Patricia D. Malone (“Court Reporter”), the Contra Costa  
17 County Chief Probation Officer Esa Ehmen Krause (“Probation Officer”), and Does 1-10. The  
18 Court previously granted Plaintiff’s application to proceed *in forma pauperis*. (Dkt. No. 4.)<sup>1</sup> It  
must now review the complaint’s allegations under 28 U.S.C. § 1915.

19 **COMPLAINT ALLEGATIONS**

20 Plaintiff alleges various constitutional violations, including violations of the Fourth  
21 Amendment, Eighth Amendment, and Fourteenth Amendment, in relation to a restraining order  
22 and a criminal conviction resulting from a violation of that order. The restraining order was issued  
23 against Plaintiff sometime before December 3, 2018. (Dkt. No. 1 at 3 ¶ 15.) The Court Clerk  
24 processed the unlawfully procured restraining order despite her training regarding the issuance of  
25 orders. (*Id.* at 3 ¶ 19.) On December 3, 2018, a Contra Costa County judge issued a warrant for  
26 Plaintiff’s arrest “based upon knowingly false information” for “unlawful conduct while a

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28 <sup>1</sup> Record citations are to material in the Electronic Case File (“ECF”); pinpoint citations are to the  
ECF-generated page numbers at the top of the documents.

1 restraining order was in effect.” (*Id.* at 3 ¶ 15.) Plaintiff was arrested and held for three days in  
2 Alameda County jail before being released on bail. (*Id.* at 3 ¶ 21.) The arresting police officers did  
3 not present an arrest warrant and “if defendants did obtain a warrant, they provided deliberately  
4 false information, or reckless statements, to the magistrate or judge to obtain said warrant.” (*Id.* at  
5 ¶¶ 28–29.) Plaintiff did not receive credit for the days spent in jail in Alameda County. (*Id.* at 3–  
6 4 ¶ 22.) On March 4, 2019, Plaintiff appeared in court where the judge “revoked Plaintiff’s bail  
7 and remanded him to custody.” (*Id.* at 4 ¶ 24.) Plaintiff was “held without bond for the entire trial  
8 and prevented from locating crucial witnesses and evidence.” (*Id.* at 4 ¶ 25.) During the trial,  
9 “Judge Burch ordered the court reporter to not make a record of [Plaintiff’s] objection” and the  
10 Judge “continually engaged in that kind of behavior, obstructing justice and creating roadblocks to  
11 a fair trial. He ‘ordered’ the court reporter not to record critical objections on numerous  
12 occasions.” (*Id.* at 4 ¶ 27.) At the conclusion of the trial, Plaintiff was sentenced to an unknown  
13 length of time in San Quentin State Penitentiary. (*Id.* at 4 ¶ 29.)

14 The California Court of Appeal voided the restraining order against Plaintiff on January 3,  
15 2020. (*Id.* at 3 ¶ 18.) Plaintiff was released from prison on April 1, 2021. (*Id.* at 5 ¶ 25.) The  
16 Probation Officer “falsely reported Plaintiff was transient[,] had no education[,]” and that  
17 “Plaintiff had a substance abuse problem when there is absolutely no information Plaintiff had any  
18 connection to any substance abuse.” (*Id.*) This “false information” caused the California  
19 Department of Corrections and Rehabilitation (“CDCR”) to send Plaintiff to Red Bluff, California  
20 for two weeks where he was homeless and without food or means of support. (*Id.*) Plaintiff’s  
21 “underlying conviction in cases 01-188003 and 0051905-90 are currently on Appeal in People v.  
22 Johnson A159389, and there is an accompanying Petition for Writ Of Habeas Corpus also pending  
23 associated with that appeal.” (*Id.* at 3 ¶ 14.)

24 Plaintiff sues Defendants in both their official and personal capacities. (*Id.* at 2 ¶ 5.) He  
25 alleges that Defendants “are responsible in some legal way for [Plaintiff’s] injuries and damages”  
26 in violation of 42 U.S.C. §§ 1983 and 1988. (*Id.* at 2 ¶ 7.) Plaintiff asserts jurisdiction under 28  
27 U.S.C. §§ 1331 and 1333 for his federal constitutional claims. (*Id.*) Finally, the requested relief  
28 includes: compensatory and general damages in the amount of \$1,007,100; changes to Contra

1 Costa County's policies; punitive damages against all defendants in the amount of \$500,000;  
2 attorney's fees; and trial by jury. (*Id.* at 8.)

### 3                   **LEGAL STANDARD**

4                   The Court has a continuing duty to dismiss any case in which a party is proceeding *in*  
5 *forma pauperis* upon a determination that the case is: (1) frivolous or malicious, (2) fails to state a  
6 claim on which relief may be granted, or (3) seeks monetary relief against a defendant who is  
7 immune from such relief. *See* 28 U.S.C. § 1915(e)(2). The standard of review under 28 U.S.C.  
8 §1915(e)(2) mirrors that of Rule 12(b)(6). *Lopez v. Smith*, 203 F.3d 1122, 1126–27 (9th Cir.  
9 2000). Thus, the complaint must allege “enough facts to state a claim to relief that is plausible on  
10 its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A facial plausibility standard is  
11 not a “probability requirement” but mandates “more than a sheer possibility that a defendant has  
12 acted unlawfully.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (cleaned up). To avoid dismissal, a  
13 complaint must contain more than “naked assertion[s],” “labels and conclusions” or “a formulaic  
14 recitation of the elements of a cause of action.” *Twombly*, 550 U.S. at 555–57. “A claim has facial  
15 plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable  
16 inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 678.

17                   A complaint must contain “a short and plain statement of the claim showing that the  
18 pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2); *see also Moss v. Infinity Ins. Co.*, No. 15-cv-  
19 03456-JSC, 2015 WL 5360294, at \*2 (N.D. Cal. Sept. 14, 2015). “While the federal rules require  
20 brevity in pleading, a complaint nevertheless must be sufficient to give the defendants ‘fair notice’  
21 of the claim and the ‘grounds upon which it rests.’” *Coleman v. Beard*, No. 14-CV-05508-YGR  
22 (PR), 2015 WL 395662, at \*4 (N.D. Cal. Jan. 29, 2015) (quoting *Erickson v. Pardus*, 551 U.S. 89,  
23 93 (2007)). A complaint that fails to state a defendant’s specific acts “that violated the plaintiff’s  
24 rights fails to meet the notice requirements of Rule 8(a).” *Medina Chiprez v. Becerra*, No. 20-CV-  
25 00307-YGR (PR), 2020 WL 4284825, at \*3 (N.D. Cal. July 27, 2020) (citing *Hutchinson v.*  
26 *United States*, 677 F.2d 1322, 1328 n.5 (9th Cir. 1982)).

27                   Further, when a plaintiff files a complaint without representation by a lawyer, the Court  
28 must “construe the pleadings liberally . . . to afford the petitioner the benefit of any doubt.” *Hebbe*

1       *v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010) (cleaned up). “A district court should not dismiss a pro  
2       se complaint without leave to amend unless it is absolutely clear that the deficiencies of the  
3       complaint could not be cured by amendment.” *Rosati v. Igbinoso*, 791 F.3d 1037, 1039 (9th Cir.  
4       2015) (cleaned up).

## DISCUSSION

Plaintiff pleads three causes of action under 42 U.S.C. § 1983: (1) the Court Clerk’s entry of the unlawful restraining order, (2) the Court Reporter’s failure to record Plaintiff’s objections during trial, and (3) the Probation Officer’s intentional inclusion of “false and misleading information in Plaintiff’s jacket” resulting in Plaintiff’s release on parole to Red Bluff, California for two weeks. (*See* Dkt. No. 1 at 5–7.)

“Section 1983 provides a cause of action for ‘the deprivation of any rights, privileges or immunities secured by the Constitution and laws’ of the United States.” *Wilder v. Va. Hosp. Ass’n*, 496 U.S. 498 (1990) (quoting 42 U.S.C. § 1983). “Section 1983 is not itself a source of substantive rights, but merely provides a method for vindicating federal rights elsewhere conferred.” *Graham v. Connor*, 490 U.S. 386, 393–94 (1989) (cleaned up). To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that the alleged violation was committed by a person acting under the color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

#### **A. First Cause of Action: Court Clerk**

Plaintiff's first cause of action arises from the Court Clerk's entry of a void restraining order. Plaintiff claims that the Court Clerk "has training on the proper issuance of temporary restraining orders and permanent orders, yet the clerk processed the void orders nonetheless." (Dkt. No. 1 at 3 ¶ 19.) Although later voided, there are no facts alleged that plausibly support an inference that the Court Clerk performed her duty in an improper manner or that intentional misconduct was present. The complaint also does not allege why the restraining order was voided and how the Court Clerk's actions violated Section 1983. Thus, Plaintiff has not plausibly alleged a violation of a constitutional right.

Even if an arguable claim existed against the Court Clerk, absolute quasi-judicial immunity

bars Plaintiff's claim. *See* 28 U.S.C. § 1915(e)(2) (mandating dismissal of any claim that "seeks monetary relief against a defendant who is immune from such relief"). Entry of a restraining order issued by a judge is a "purely administrative act," which "when viewed in context [is] actually a part of the judicial function." *In re Castillo*, 297 F.3d 940, 952 (9th Cir. 2002) (scheduling and notice of hearing); *see also Moore v. Brewster*, 96 F.3d 1240, 1244 (9th Cir. 1996) (supersedesas bond). Thus, absolute quasi-judicial immunity bars the claim against the Court Clerk.

#### B. Second Cause of Action: Court Reporter

Plaintiff's second cause of action arises from the Court Reporter's failure to record Plaintiff's objections during trial. Plaintiff claims that "[t]he Court Reporter does not have discretion to not take down testimony or record critical objections even when unlawfully ordered by a Judge not to record the objections," and that her failure to do so resulted in Plaintiff being denied a fair trial. (Dkt. No. 1 at 6 ¶ 40.) He specifically alleges that "Judge Burch ordered the court reporter to not make a record of the objection so as to preserve it for trial. . . . He 'ordered' the court reporter not to record critical objections on numerous occasions." (*Id.* at 4 ¶ 27.) The allegations are unclear as to whether this alleged constitutional violation occurred from "September 4, 2018 through December 20, 2018" as stated in the complaint, (*id.* at 4 ¶ 39), or after Plaintiff's arrest in early 2019 for violation of the restraining order. (*See id.* at 4 ¶¶ 25–27 (the chronological order of events indicates the Court Reporter's alleged actions occurred during the trial and/or hearings for a violation of the restraining order).) Given the ambiguity of the allegations, the complaint does not provide the Court Reporter with the notice required by Rule 8(a)(2).

Furthermore, if the alleged constitutional violation occurred during the trial and/or the hearings for a violation of the restraining order, this claim would be barred by *Heck v. Humphrey*, 512 U.S. 477 (1994). To obtain relief for "harm caused by actions whose unlawfulness would render a conviction or sentence invalid, a § 1983 plaintiff must prove that the conviction or sentence has been reversed on direct appeal." *Heck*, 512 U.S. at 486–87. According to the complaint, Plaintiff's conviction for violating a restraining order is currently before the California Court of Appeal and is not invalidated. (Dkt. No. 1 at 3 ¶ 14.) Since the failure to record

1 objections at trial is a *de facto* challenge to Plaintiff’s conviction which has yet to be ruled on by  
2 the state appellate court, *Heck* would bar this claim.

3 Moreover, regardless, drawing all reasonable inferences from the allegations in Plaintiff’s  
4 favor, the Court Reporter may be immune from suit. Quasi-judicial immunity “applies when a  
5 non-judicial officer performs a non-discretionary or administrative function . . . at the explicit  
6 direction of a judicial officer.” *Wright v. Beck*, 981 F.3d 719, 738 (9th Cir. 2020) (cleaned up).  
7 Here, according to Plaintiff’s allegations, the judge “ordered” the Court Reporter to exclude  
8 certain objections from the record. (Dkt. No. 1 at 4 ¶ 24.) This explicit direction by the judge  
9 could be considered an extension of the judge’s exercise of discretionary judgment. *See Wright*,  
10 981 F.3d at 738.

### 11 C. Third Cause of Action: Probation Officer

12 Plaintiff’s third cause of action is against the Probation Officer for the intentional inclusion  
13 of false and misleading information in Plaintiff’s file that caused Plaintiff to be released on parole  
14 in Red Bluff, California where he remained for a period of two weeks. “[A]n inmate who is  
15 released on parole . . . shall be returned to the county that was the last legal residence of the inmate  
16 prior to the inmate’s incarceration.” Cal. Penal Code § 3003(a). Notwithstanding this rule, “an  
17 inmate may be returned to another county or city if that would be in the best interests of the  
18 public.” *Id.* § 3003(b). Plaintiff’s complaint fails to allege facts that support an inference that  
19 placement in Red Bluff was contrary to the public interest or violative of a constitutional right.

20 Moreover, probation officers have immunity from certain claims. “[A]bsolute immunity  
21 extends to parole officials for the imposition of parole conditions because that task is integrally  
22 related to an official’s decision to grant or revoke parole, which is a quasi-judicial function.”  
23 *Thornton v. Brown*, 757 F.3d 834, 839–40 (9th Cir. 2013) (cleaned up). Here, Plaintiff alleges that  
24 the Probation Officer “falsely reported Plaintiff was transient[,] had no education[,]” and that  
25 “Plaintiff had a substance abuse problem when there is absolutely no information Plaintiff had any  
26 connection to any substance abuse.” (Dkt. No. 1 at 5 ¶ 25.) It is unclear whether the Probation  
27 Officer’s conduct equates to the imposition of parole conditions. Thus, the facts as pleaded do not  
28 compel a finding of immunity.

## CONCLUSION

For the reasons explained above, the complaint as pleaded does not survive section 1915 review. If Plaintiff believes he can cure the deficiencies, he may file an amended complaint on or before **January 5, 2022**.

## **IT IS SO ORDERED.**

Dated: December 9, 2021

  
Jacqueline Scott Corley  
JACQUELINE SCOTT CORLEY  
United States Magistrate Judge

United States District Court  
Northern District of California